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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2015 - 2017 (U39G).

Application 13-12-012  
(Filed December 19, 2013)

And Related Matter.

Investigation 14-06-016

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING CITY OF  
SAN BRUNO'S MOTION TO COMPEL DISCOVERY  
AND DENYING CITY OF SAN BRUNO'S REQUEST TO  
APPOINT A SPECIAL DISCOVERY MASTER**

**Summary**

This Administrative Law Judge's (ALJ) ruling grants in part, and denies in part, the *City of San Bruno's Motion to Compel Pacific Gas and Electric Company to Respond to Data Request Seeking Production of Documents and to Appoint a Special Discovery Master*. The City of San Bruno's (San Bruno) request to compel Pacific Gas and Electric Company (PG&E) to produce 65,000 e-mails in response to San Bruno's data request is granted, subject to limitations discussed herein. San Bruno's request for a special discovery master is denied. PG&E shall provide the 65,000 e-mails, with confidential information redacted, to the Commission's Executive Director, the Chief ALJ, the assigned Commissioner, the assigned ALJ and San Bruno, by January 30, 2015.

## 1. Background

On December 15, 2014, San Bruno filed *City of San Bruno's Motion to Compel Pacific Gas and Electric Company to Respond to Data Request Seeking Production of Documents and to Appoint a Special Discovery Master; Declaration of Britt K. Strotzman in Support of City of San Bruno's Motion to Compel Pacific Gas and Electric Company to Respond to Data Request Seeking Production of Documents and to Appoint a Special Discovery Master; Proposed Ruling Granting Motion of the City of San Bruno to Compel Discovery and Appointing a Special Discovery Master (Motion to Compel)*. The *Motion to Compel* seeks production of the "65,000 e-mails" referenced in a September 15, 2014 PG&E news release.<sup>1</sup> San Bruno is seeking disclosure of these e-mail communications to determine whether there were "any violations of the [Commission's Rules of Practice and Procedure], improper influence, or *ex parte* communications with the Commission seeking an unfair advantage in proceedings before the Commission."<sup>2</sup> It contends that its data request is relevant in ensuring that intervenors receive a fair hearing in this proceeding.

San Bruno argues that PG&E's 65,000 e-mails are not privileged since PG&E voluntarily disclosed the information to the Commission. However, San Bruno notes that PG&E has only disclosed 24 of the 65,000 e-mails reviewed. It argues that in order to protect the due process rights of ratepayers and intervenors, PG&E should not be allowed to "provide the responsive documents through its own picking and choosing."<sup>3</sup> Consequently, San Bruno proposes that

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<sup>1</sup> See, *Motion to Compel*, Exhibit A.

<sup>2</sup> *Motion to Compel* at 7.

<sup>3</sup> *Motion to Compel* at 15.

the Commission “appoint an impartial special discovery master to analyze the records and order which communications are exempt from disclosure and which must be produced, similar to an *in camera* inspection.”<sup>4</sup>

PG&E filed its response to the *Motion to Compel* on December 26, 2014. PG&E first contends that the motion should be denied because the database of 65,000 documents includes documents that are not relevant to this proceeding.<sup>5</sup> It further asserts that San Bruno’s request for a special discovery master “would impose an undue burden and is unworkable,” as it would take the proposed special discovery master over 8 months of full-time work to review all 65,000 documents. Finally, PG&E argues that the *Motion to Compel* is moot, since PG&E had announced on December 22, 2014 that it would be providing all 65,000 e-mails to the Commission by mid-February. PG&E concludes: “Since PG&E will be providing the e-mails San Bruno seeks to the Commission, and expects the Commission to establish a process to make the e-mails available to the public, there is no further need for any of the relief San Bruno seeks.”<sup>6</sup>

## **2. Discussion**

Rule 10.1 of the Commission’s Rules of Practice and Procedure states:

Without limitation to the rights of the Commission or its staff under Pub. Util. Code §§ 309.5 and 314, any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible

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<sup>4</sup> *Motion to Compel* at 16.

<sup>5</sup> *Pacific Gas and Electric Company’s Response to the City of San Bruno’s Motion to Compel Pacific Gas and Electric Company to Respond to Data Request Seeking Production of Documents and to Appoint a Special Discovery Master (PG&E Response)*, filed December 26, 2014, at 4.

<sup>6</sup> *PG&E Response* at 6.

in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

PG&E does not contend that none of 65,000 e-mails are relevant to this proceeding; it has only asserted that this database “includes documents that are not relevant.” To the extent San Bruno ultimately seeks to admit any of the e-mails into the record of this proceeding, it will need to show their relevance. Further, PG&E has already stated it will be providing the 65,000 e-mails to the Commission. As such, granting San Bruno’s discovery request cannot be considered burdensome or intrusive. Finally, I disagree that San Bruno’s discovery request is moot merely because PG&E expects that the Commission will establish a process to make the e-mails available to the public some time in the future. PG&E has already expressed its expectation that the Commission will make the e-mails available to San Bruno. However, it has not explained why San Bruno must obtain these e-mails from the Commission (after a process has been established), rather than directly from PG&E. Indeed, waiting until after the Commission receives the e-mails in February unnecessarily delays PG&E’s response to San Bruno’s data request. Based on these considerations, PG&E shall provide the 65,000 e-mails to San Bruno at the same time that it provides them to the Commission. PG&E shall provide copies of the 65,000 emails to the Commission’s Executive Director, the Chief ALJ, the assigned Commissioner, the assigned ALJ and San Bruno by January 30, 2015.

I recognize that some of the e-mails may contain confidential information, such as names of employees below the director level, trade secrets, market sensitive information and/or critical infrastructure information. PG&E’s

December 22, 2014 press release announcing its intent to provide the 65,000 e-mails to the Commission states that PG&E is reviewing the e-mails “for appropriate and unusual confidential exclusions.”<sup>7</sup> PG&E’s press release, however, is unclear whether the identified e-mails would not be provided to the Commission at all or provided with the confidential information redacted. For purposes of responding to San Bruno’s data request, PG&E shall provide all e-mails. For those e-mails containing confidential information, PG&E shall redact only the confidential information, but retain the content of the communication. PG&E should err on the side of greater disclosure and redact the minimum amount to maintain confidentiality. If San Bruno believes that PG&E has over-redacted information on a specific e-mail, it may file a motion for *in camera* review of the e-mail to determine whether the information redacted is subject to confidential treatment.

San Bruno’s request for a special discovery master, however, is denied. Since this ruling directs PG&E to provide all 65,000 e-mails to San Bruno, there is no need for a “special discovery master” to determine which e-mails should be disclosed.

**IT IS RULED that:**

1. The *City of San Bruno’s Motion to Compel Pacific Gas and Electric Company to Respond to Data Request Seeking Production of Documents and to Appoint a Special Discovery Master* is granted in part and denied in part. The City of San Bruno’s

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<sup>7</sup> PG&E Backs Transparency and Accountability in Communications with the CPUC and Self-Reports Additional E-mails that Could Reflect Past Violations of Rules, located at [http://pge.com/en/about/newsroom/newsdetails/index.page?title=20141222\\_pge\\_backs\\_transparency\\_and\\_accountability\\_in\\_communications\\_with\\_the\\_cpuc\\_and\\_self-reports\\_additional\\_e-mails\\_that\\_could\\_reflect\\_past\\_violations\\_of\\_rules](http://pge.com/en/about/newsroom/newsdetails/index.page?title=20141222_pge_backs_transparency_and_accountability_in_communications_with_the_cpuc_and_self-reports_additional_e-mails_that_could_reflect_past_violations_of_rules).

request to compel Pacific Gas and Electric Company to produce 65,000 e-mails in response to San Bruno's data request is granted. The City of San Bruno's request for the appointment of a special discovery master is denied.

2. Pacific Gas and Electric Company shall provide the 65,000 e-mails, with confidential information redacted, to the Commission's Executive Director, the Chief Administrative Law Judge, the assigned Commissioner, the assigned Administrative Law Judge and the City of San Bruno by January 30, 2015.

Dated January 13, 2015, at San Francisco, California.

/s/ AMY C. YIP-KIKUGAWA

Amy C. Yip-Kikugawa  
Administrative Law Judge